



April 17, 2000

Mr. William A. Franklin
Assistant District Attorney
County of Lubbock
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2000-1518

Dear Mr. Franklin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135515.

The Lubbock County Sheriff's Department (the "department") received a request for an investigative report and medical records relating to a death in custody as well as the "rap sheet" of the deceased individual. You seek to withhold the information responsive to the request under section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas Medical Practice Act ("MPA"), in section 159.002(b) of the Occupations Code provides:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

We have marked the documents that you must withhold from public disclosure pursuant to section 159.002(b). Those documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991).

Federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record

information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). You must withhold, under the above-referenced provisions, the CHRI in the submitted materials.¹

You contend that the requested investigative report of the incident is made confidential under article 49.18 of the Code of Criminal Procedure as interpreted in Open Records Decision No. 521 (1989). Article 49.18 requires submission of custodial death reports to the Attorney General who is to make such reports available to the public except for information he determines to be privileged. Open Records Decision No. 521 determined that only a portion of a requested custodial death report prepared under article 49.18 was subject to disclosure. The decision, however, noted that such reports might contain information which, if specifically requested, would not be subject to withholding under article 49.18, as would be in the case where the custodial death report was itself requested.

Here, you advise that the requested “investigative report from Mark Ponce” was attached as an exhibit to the custodial death report filed with the Attorney General. In our opinion, this report, because specifically requested, is not subject to the rationale for withholding set out in Open Records Decision No. 521. The report may not be withheld simply because it was attached to the required custodial death report submitted to the Attorney General. As you have raised no other applicable exceptions to disclosure, the requested report must be released.

We note that the submitted information contains social security numbers. Social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code and must be withheld.

We note finally that the submitted information contains driver’s license numbers. Section 552.130 of the Government Code provides in relevant part:

- (a) Information is excepted from [required public disclosure] if the information relates to:

¹We note that you contend that some of the submitted information is protected by common law privacy. Section 552.101 incorporates common law privacy protections. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. However, an individual’s privacy protection lapses upon his death. Open Records Decision No. 272 (1981). None of the submitted information is, in our opinion, protected by common law privacy.

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The department must withhold the driver's license numbers pursuant to section 552.130. Except as noted above, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

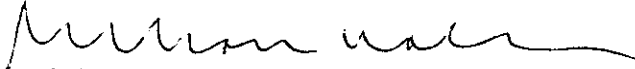
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 135515

Encl. Submitted documents

cc: Ms. Sally Gonzales
2506 Procopio Place
Albuquerque, New Mexico 87105-4418
(w/o enclosures)